

March 3, 2009

Cathy Kahlow
Salt Lake Ranger District
6944 South 3000 East
Salt Lake City, Utah 84121

Dear Cathy,

I am writing pursuant to our recent email and telephone correspondence with respect to obtaining motorized access across National Forest system lands in Big and Little Cottonwood Canyons and in the Dry Fork and Snakecreek areas in Utah and Wasatch Counties.

Since taking over the Salt Lake Ranger position from Loren Kroencke, you stated that, 1) you had not yet seen nor been able to locate my June 16, 2008 detailed response for additional information concerning this ANILCA easement and special use authorization request, and, 2) that you were waiting for me to respond to Loren Kroencke's September 11, 2008 letter, and 3) that you request that I, "Prioritize my various requests for motorized access so that (you) might know where to start."

First, I should point out that it has been over a year since my attorney Chris VonMaack, Esq. met with Brian Ferabee, Loren Kroencke and others from the Forest Service Regional Office including boundary, title and surveyor personnel. Subsequently, specifically on point to this motorized access request, I have spoken again with Brian Ferebee, Loren Kroencke, Troy Warburton (Head of USFS Boundary and Title regional office), Ken Paur, Esq. (Legal Counsel for the Department of the Interior Regional Office), Merrill Cazier (Land Surveyor USFS) and Melissa Hurst (ANILCA Claims and Special Use permit Coordinator).

Also, with respect to the long delays in the Forest Service's processing of this access request, I am aware that Federal Registrar Vol. 71, no. 34, February 21, 2006, Rules and Regulations was enacted to specifically address deficiencies within the Forest Service in managing its "Special Uses Program in a timely and customer-service friendly way." Section 331 of the Interior and Deleted Agencies Appropriations Act of November 29, 1999 (Publ. L. 106-113) describes the processing time frames required and, "to estimate when a decision will be made regarding their application." Pursuant to the above, in conjunction with NEPA response requirements, GAO report # RCED-96-84 (April 1996) and GAO report #RCED-97-16 (December 1996), Federal Register (64 FR 66342), FLPMA (43 U.S.C. 1764(g), Section 28(1) of the Mineral Leasing Act of 1920 (MLA) as amended (30 U.S.C. 184 (1)), I ask that this request for access be expedited. Further, I ask that all applicable prior environmental impact assessments and statements for the relevant areas be provided to me and that all appropriate time estimates afforded by policy and law be provided to me.

In terms of answering your request to prioritize my requests by location and importance, they are all equally important and , given the long delays of the Forest Service, deserve to be expedited simultaneously.

First, I think that the Catherine's Pass Road Access is probably the easiest. Depending on Forest Service legal opinion, I will need a Special Use Permit for the sections of road that lead up to the old Great Western Mines property that were deeded to the Department of Agriculture in the 1970s. Ken Paur, Esq. has worked on this extensively especially as it relates to the Albion Basin/Alta Ski area winter closure plan, and the Joanne L. Shrontz estate 28U.S.C. A82409a Quiet Title actions (see Herb Livsey, Esq., Ray Quinney and Nebeker, October 4, 2006 legal claim and document compendium written to Mr. Troy Warburton, Regional Program leader, Boundary and Title Management).

My suggestion, again, would be to have yourself, Mr. Warburton and Mr. Paur, Esq. reference the 3 deeds conveying lands from our predecessor, Great Western Mines Company, and issue a Memorandum of Understanding or some other acceptable legal instrument to acknowledge the access rights provided in the deed language. The necessity of taking this step is most evident in the Forest Service's pursuit of and criminalization of landowners simply attempting to access their private property.

The Forest Service manual 2734 governs the "construction, reconstruction, use and maintenance of roads trails and highways across National Forest System lands." FSM 2734 provides that all highways across Forest lands "require some form of authorization "unless the authorization already exists through a deed reservation or an outstanding right. Great Western Mining Company, LLC holds outstanding reserved rights of access by deed to those properties comprising Catherine's Pass. While Forest Service authorization is not needed for these properties, an acknowledgment of the easement will proactively resolve any Forest Service personnel's penchant to write criminal tickets against Great Western landowners for legally accessing private property. In addition, Ken Paur, Esq. is familiar with the myriad of Salt Lake County road easements which dovetail and interconnect county properties in the Alta-Brighton area with split estate lands owned by both Great Western and the Forest Service which relate to road access rights, mineral rights, timber harvest rights retained by Great Western Mining Company over Department of Agriculture's acquired surface rights (all of the relevant deeds have been previously provided by me to your office).

Great Western believes that both itself and Salt Lake County possesses all rights, title and interest in the Catherine's Pass (Alta to Brighton) Highway sufficient to access its properties. FSM 2734.2 provides that the "holder of outstanding rights perfected on acquired land prior to Forest Service acquisition...may exercise those rights without obtaining a Special Use authorization....."

FSM 2734.2 also provides that Forest Service “carefully examining the basis or grounds for a claim of right-of-way and secure a legal opinion of necessary in order to determine the extent of the outstanding or reserved rights.”

I respectfully request that the Forest Service follow FSM 2734.2 and 1) carefully examine the grounds for a claim of right of way, 2) obtain a legal opinion to determine the extent and nature of the various rights, title and interest in Catherine’s Pass Highway, 3) obtain a legal opinion regarding Salt Lake County’s ownership in the Catherine’s Pass Highway under easement grants and under RS2477, 4) legally determine the extent, nature and width of all Salt Lake County road easements and how the Salt Lake County road easements relate to the Catherine’s Pass Highway rights and interest retained by Great Western Mining Company in lands acquired by the Forest Service from Great Western.

Please be aware that access to roads in Dry Fork of American Fork Canyon also falls within this same FSM 2734.2 acknowledgement and analysis.

In terms of access to the Tolton Secret Lake property, (see June 16, 2008 letter from Kevin Tolton to Loren Kroenke and enclosed quitclaim deed in favor of Kevin and Emily Tolton recorded 12/5/2002 for Great No. 1 Lock mining claim) the recorded deed language explicitly provides for a “right of way over existing roadways, and rights of way for all future roadways.”

I incorporate by reference herewith again the legal analysis contained in the Herb C. Livsey letter to Troy Warburton dated October 4, 2006. With respect to the Salt Lake Ranger District’s Winter Travel Management Plan (herein “Amended Travel Plan”) the Forest Service does not possess the requisite authority or jurisdiction to regulate use of the highway from State Road 210 to Secret Lake. The Forest Service should issue a recordable disclaimer of interest under the Quiet Title Act, under all of the legal theories presented to the Forest Service by Herb Livsey, Esq..

In part, Mr. Livsey points out that, “The Compiled Laws of Utah 441 (1888) provides that: “the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted” This law enabled the Territory of Utah to construct a public highway in Little Cottonwood Canyon and, as a result, the highway became a public right-of-way. Thus, the Territory, and subsequently the State of Utah, built and maintained the highway and obtained authority and jurisdiction over the entire highway in Little Cottonwood Canyon, including the highway to the Secret and Cole Lode mining claims.

FSM 2734.5 governs Rights-of Way granted by Statute and provides that pre-existing rights-of-way survived the enactment of the Federal Land Policy and Management Act (FLPMA”) as follows:

Under the Act of July 26, 1866 (Revised Statute (RS) 2477; 43 USC 932, Congress granted rights-of-way for public highways and county roads constructed across

public domain before the lands received National Forest status. Although the 1866 Act was repealed by Federal Land Policy and Management Act in 1976 (43 USC 1715), rights, which pre-exist the establishment of the National Forest, are preserved.

In FSM 2734.5, the government clearly states the Forest Service "has no jurisdiction over highway-related activities of the right-of-way holder...."

With respect to the fee simple rights to surface and minerals in the Brighton area, the access routes will require access from both the Brighton loop across National Forest system lands along the Brighton ski area service roads up to the Dog Lake area to the properties (Leggett, Relief, magnet, IdaMay and the Jack Mine properties.) and from Alta via the Albion Basin Summer road to Catherine's Highway. In addition, access is needed from the Brighton Loop, along the ski service roads to another grouping of properties close to the top of the Great Western lift (i.e. the Agathos No. 15, Agathos No. 16, Agathos 18, and Agathos 21). The Agathos properties are in the Brighton ski area and go across Salt Lake County lines and are not contiguous with the Leggett, Relief, etc. claims.

The next priority of access would be to focus on Cardiff Fork properties.

I have enclosed an access permission document provided by Evan Johnson for properties in Cardiff Fork Canyon (i.e. Bachelor, Bachelor No. 4, Grustave No.1, Clyde, Sailor Jack, Chieftain, Venus, Thor and Barnegat No. 1, Barnegat No. 3, Barnegat No. 4, General Lafayette). I have also enclosed a copy of the special warranty deed conveying those properties to J.L.C. (Grantee) by Marvil Investments, LLC (Grantor) recorded December 3, 2007, and by Ami Associates (Grantor) recorded November 13, 2008. I have also previously provided Loren Kroenke, Brian Ferabee and Ken Paur, Esq. with a copy of an easement for which I am the dominant estate easement holder for properties in Mineral Fork, Cardiff Fork, Days Fork and Silver Fork and which properties also extend from the ridge tops adjoining Big and Little Cottonwood canyons extending variously down into both the Town of Alta and Salt Lake County properties (see USGS maps previously provided by me). All other Cardiff Fork properties are listed in paragraph 4 of my June 16, 2008 response letter under the category "Routes/Roads for which motorized access is required/requested".

In addition to the Special Use Permit I already have, I will need specific authorizations to access the J.L.C. (Evan Johnson) lands and the John Anderson lands that go beyond the present scope of my Cardiff Fork access permit.

I have previously provided your office with specific route information and would be happy to sit down with you to show you the existing road access routes. Google Earth also has great satellite photographic maps of the areas clearly depicting the roads. Forest Service survey maps, land status maps and route maps are also very detailed and would serve this purpose.

As was stated in my June 16, 2008 response packet to Loren Kroenke, I am also requesting to maintain the roads at historic standards within a 14-foot wide area subject to 31CFR 5.7 which limits the Forest Service authority over road maintenance.

The third priority would be Days Fork. The specific properties to be accessed are the Northerly Extension of the Reed and Benson (J.L.C.) and John Anderson properties Geneva, Geneva No. 1, Hypacia, McCrea, Victory, Deming, Hillside, Hillside Fraction No. 1, Rexall Fraction, and Oxford of which I am the dominant estate easement holder.

The fourth priority would be the road to Silver Fork Canyon, which goes from Big Cottonwood Highway 190 to the lower Solitude Ski Resort parking lot to the locked Silver Fork Canyon Road gate. These properties are also listed in my detailed response to Loren Kroenke dated June 16, 2008. The relevant Silver Fork properties are: Hanson, Monitor Ext., Monitor Mine No. 2, Sella, Congress No. 41, Thunderer 115, and Walker 129.

The Silver Fork Road branches to access Honeycomb Canyon Road to Nellie 114 and the Walker 129 (T2SR3E Sections, 21,22, 27, 28, 33, 34).

The fifth access priority will be for the Snakecreek and Drycreek areas of Utah and Wasatch Counties while some of these roads are currently open to motorized traffic, others are not. In addition, the majority of these roads have fallen into disrepair from lack of maintenance. Forest Roads 421 and 085 in particular need basic bobcat maintenance work as does the Dry Fork section in upper American Fork Canyon.

Access to the Kimball claims, WS Hancock, Yellow Jack, My O My, etc. in addition to the mineral claims in Dry Fork will be necessary by motorized vehicles. Road maintenance authorization is hereby requested again, subject to 31CFR 5.7.

In response to your request to answer all other questions which Mr. Kroenke posed in his September 11, 2008 letter, frankly he had already asked those same questions in his January 15, 2007 letter and I have answered them in great detail already in my June 16, 2008 response letter. Nevertheless, I will briefly answer them again here, but for the most complete and detailed responses please again see my June 16, 2008 letter which I hereby reference and include together with my responses herewith.

- 1) Private land activities: With the exception of the Evan Johnson properties, (where no mining activities will occur), all other properties will have subsurface mining activities. Where State and local laws regulate mining activities, all relevant permits will be obtained. Since no federal lands will be mined, no plan of operation is required. All properties listed in my

June 16, 2008 response letter will have the following uses and activities: timber harvest and transport to the Salt Lake Valley, landscape boulder removal and transport to Salt Lake City, winter snowmobiling recreation, winter snowcat skiing, summer ATV recreation and jeeping, camping, sightseeing and equipment hauling for elderly, handicapped, pregnant and infant people, and trespass patrol (NOTE: this type of backcountry patrol is not being conducted by Forest Service law enforcement or County Sheriffs on foot. It will require traveling long distances of 20 to 30 miles in short periods of time. 20 to 30 miles per day on foot is impossible.) All of those land uses will occur immediately and are not merely contemplated uses as Mr. Kroencke suggests. They will occur on each and every parcel of land described herein and as previously described in my letter to Mr. Kroencke dated June 16, 2008.

- 2) Vehicles Used: Snowmobiles, Snowcats in winter months, ATVs, jeeps, trucks, motorcycles, 4WD vehicles in summer, spring and fall months.
- 3) Timing: All routes will be used three times per day 365 days per year to access all properties described in my June 16, 2008 response letter.
- 4) I have provided extensive maps with routes described including old mining maps, Forest Service land status maps, Collier maps, Gorlinski maps, USGS maps, Google aerial maps, etc..
- 5) Improvements: Road grading will be minimal and only to historic standards within a 14-foot wide area. Obstructing boulders will be removed on all road routes and erosion control measures like culverts can be approved by you on a case-by-case basis. Avalanche debris will also be removed. All machines used for road maintenance will be bobcats and skid steers unless specifically approved by you.
- 6) Why is current access not sufficient? Because all of the federal lands described above are closed to motorized access. Many of the roads are gated and locked with large gauge metal gates.
- 7) The location and ownership of the various parcels of ground have already been provided in my June 16, 2008 letter.

Again, I ask that the Salt Lake Ranger's office obtain copies of all of the exhibits and maps I have previously provided to the Forest Service from Brian Ferobee, Ken Paur, Esq. or through a Freedom of Information Request initiated by the Forest Service to the Forest Service, supplemental to my June 16, 2008 response.

In summary, I request that the Forest Service act affirmatively to consult legal counsel and obtain legal opinions regarding the extent, nature, width, length and ownership interests of the various road routes described above for ingress and egress to private property in Salt Lake, Utah and Wasatch counties.

I further request that the Forest Service follow FSM 2734.2 and carefully examine the basis or ground for claims of rights-of-way herein described and as set forth in my June 16, 2008 letter and in Herb Livsey's letter and Quiet Title Claim dated October 4, 2006.

For those roads and rights-of-way that exist already and are not subject to Forest Service jurisdiction, I request that those rights be acknowledged in writing by Department of the Interior and/or Department of Agriculture legal authorities.

Where ANILCA easements exist or where legal authorization to access private property under ANILCA exists, I request those routes to be described in a recordable document. Where Forest Service Special Use authorization legally applies, I request an expedited authorization and appropriate road maintenance permit.

In conclusion, please be advised that many existing easements and rights-of-way preclude Forest Service restrictions on motorized travel. These rights-of-way originate in specific deed language and reservations for the split estate owned properties through which the Catherine's Pass highway traverses.

The road to Albion Basin (i.e. State Highway 210, all the way to Albion Campground), is owned by the State of Utah and Salt Lake County under authority of the Territorial Laws of Utah, the United States Existing Laws published by the Federal Government in 1884, Revised Statute 2477 (Section 8 of the Act of July 26, 1866, 43 USC 932), Dedicated Use Highway statutes, the Compiled Laws of Utah 441 (1888), Forest Service Manual 2734.5, FSM 2734.2, Utah Territorial Code 3-13-2075 (1888), ANILCA and others; given the caveat that ANILCA does not apply to common law rights of access. Also 36 CFR 251.115(f) requires the Forest Service to review this current application to find "a lack of any existing rights or routes of access available by deed or under state or common law" before a Special Use Permit for access will be granted.

Further, the Ninth Circuit in *Skrank v. United States Forest Service*, 425 F. 3d 1213, 1219 (9th Circ. 2005), held that the Forest Service does not have authority to regulate access to inholders' properties under ANILCA when pre-existing State easements exist. The Court stated that the "Forest Service has put the matter beyond question by conceding at oral argument that 36CFR 251.114 (f) does indeed require it to make an easement-ownership determination. The roads from Highway 190 in Big Cottonwood Canyon to Cardiff Fork, Days Fork, Silver Fork and Honeycomb Canyons are RS2477 roads constructed under acts of Congress and predate the Forest Reserve in 1906.

Thank you, in advance, for your prompt attention to this request for access to private property across National Forest system lands.

Sincerely,

Kevin D. Tolton, M.D.

June 16, 2008

Loren Kroenke
Salt Lake Ranger District
6944 So 3000 East
Salt Lake City, UT 84121

RE: Road access in Big and Little Cottonwood Canyons, Snakecreek Canyon and American Fork Canyon

Dear Loren,

This letter is written as follow-up to our meeting January 8, 2008 which included the Forest Supervisor Brian Ferebee and my attorney Christopher Von Maack, Esq, and subsequent written correspondence by you January 12, 2008 and March 15, 2008, and by me to you February 20, 2008 (enclosed herein as exhibit 1).

The road routes for which I am seeking Forest Service Authorization traverse Federal lands in Big and Little Cottonwood Cottonwood Canyons: [i.e., Mineral Fork, Cardiff Fork, Days Fork, Silver Fork, Honey Comb Canyons, Brighton to Dog Lake and to other Great Western properties, [i.e. Alta to Cardiff, Alta to Days Fork, Alta to Brighton via Catherine Pass Highway into Albion Basin], Snakecreek Canyon: {i.e. Snakecreek road to various Great Western Mining Company properties, including spurs in Wasatch and Utah counties} and American Fork Canyon: (i.e. snakecreek to Dry Fork in American Fork Canyon, Brighton to Dry Fork, Alta to Dry Fork, Catherine Pass to Sunset Peak, Brighton Loop to Catherine Pass, etc.)

This letter acts to variously apply for ANILCA easements in applicable routes, special use authorization in others and in acknowledgement of easements in the case of the Catherine's Pass properties wherein the Forest Service (Department of Agriculture) holds the surface rights conveyed by our predecessors in interest but wherein the mineral rights and access rights to roads were retained by Great Western Mining Company L.L.C..

I am making application as an individual for the road segments going to Albion Basin (i.e. Cecret Lake and Cole lode mining claims) and for the John Anderson easement properties.

For the remainder of the properties I am submitting road access requests and acknowledgements for easements on behalf of Great Western Mining Company LLC, as a managing member.

The road access issue at hand involves hundreds of acres of public and private lands in the Wasatch mountains east of the greater Salt Lake City area. Many of these federal lands are subject to and burdened by an existing grants, easements and rights of way.

In making application for road use authorizations, I hereby retain all rights to these roads and highways under RS2477 (Section 8 of the Act of July 26, 1866 (43 USC 932

repealed), the Law of Dominant Tenant, the Territorial Laws of Utah, The Mining Laws of 1872, 16 USC Chapter 51 Section 3210, rights granted to patent holders when federal land was conveyed by patent, prescriptive easement rights, ANILCA (Alaska National Interests Lands Conservation Act) and others.

My purpose in applying for road use authorizations (and easements where applicable) is neither to acknowledge federal ownership in nor Forest Service Authority over the roads and highways, but rather to craft an interim "Stand Down Agreement" pending resolution of road ownership claims by appropriate State, County and local government authorities against the federal government.

You have at various times cited multiple regulations and authority under the following: 36 CFR 261.55(b), 36CFR 251.50, 36 CFR 251.110, 36 CFR 261.9, 36 CFR 261.10 (a), 36 CFR 261.54, 36 CFR 228 subpart A, 16 USC 551 and 16 USC 3210. Concomitantly, you have acknowledged that the Forest Service cannot legally block access to private property where access routes to private property traverse federal lands (whether those lands remained reserved or were reacquired): "In general the Forest Service is required by federal regulations to provide access that is adequate for reasonable use and enjoyment of the private land (36 CFR 281.110)."

Furthermore, with respect to mineral rights and the mining of patented private lands, CFR 261.1(b) is an acknowledgement by the Federal Government that mining operations, "may not be prohibited nor so unnecessarily circumscribed as to amount to a prohibition." Furthermore, in regards to my specific requests herein for road maintenance and repairs, road maintenance authorization is not required under 31 CFR 5.7 if road improvements and maintenance preserves what is already there.

In your correspondence to me, you have asked that I provide you with specifics beyond my February 20, 2008 letter with respect to the following topics:

1. Specific use of private property/planned uses and specific information about activities to be conducted on private property.
2. On which properties these planned uses will occur.
3. The location and ownership of the various parcels of private land.
4. The routes requested for motorized use.
5. The level of traffic/frequency of planned uses/season or seasons of road use.
6. The types of vehicles to be used on private (non-federal) land/mode of access proposed for each route.
7. Specifically describe the roadwork and road maintenance required on National Forest Service (NFS) land/road standards required.
8. The reasons why current, existing forest travel plans are inadequate for private property uses.

The following answers are submitted in response to your request for additional information. I have also enclosed exhibits where appropriate.

1. Planned uses of Private Land:

- a. Mining on Patented Private Land; This activity will include surface and underground lode mining of all valuable ore. Timber harvest necessary for and incidental to mining will also occur. Timber from one mining operation may need to be transported to another close by area in the same canyon or to another adjacent mining district. Under Utah law, securing and shoring up mine tunnel entrances and underground mining with minimal surface disturbance do not require State of Utah mining permits from the Division of Oil, Gas and Mining. All other surface mining will be done in compliance with State law. Currently no mining on unpatented federal lands is anticipated, therefore, no mining plan of operation is required to be submitted for Forest Service approval under 36 CFR 228 subpart A.

Notice is hereby given by Great Western Mining Company, L.L.C. pursuant to the requirement contained and made part of the deed and reservations between the United States Department of Agriculture and Great Western Mines Company (herein enclosed as exhibit 2). Great Western Mining Company intends to mine and remove surface rocks and granite boulders on its mineral properties of which the Forest Service owns the surface estate in the Catherine's Pass area (approximately 1000 acres). The conditions, rules and regulations to govern exercise of mineral rights reserved in conveyances to the United States applies " where owners reserve the right to enter upon the conveyed lands and to prospect for, mine, and remove minerals." (see enclosed exhibit 2).

This request shall be construed as an application for permit to mine as required by these rules. In addition to using the Catherine's Pass Highway for mining purposes, Great Western will be exercising its reserved road access rights (as confirmed in the Warranty Deed language) for summer and winter year round motorized access.

In addition to lode mining (i.e. underground mining) and shoring up existing tunnel entrances and underground workings (slopes, chimneys, tunnels, winzes, etc.), other types of surface metallic mineral exploration will also occur in the future in phases.

Geophysical surveys such as magnetics and IP will be employed to identify potential target areas. Site construction will include exploration development and drill pad construction. A diamond drill rig would then be employed to develop the target concept in the third dimension. The promising target is copper-magnetic-gold skarn and silver-lead ores. Interestingly, Kennecott (RioTinto) is in the process of developing a metallurgical and mineralogically similar ore body beneath the current Bingham Canyon pit. It is possible that a similar ore could be transported via 10-wheel dump truck and processed at Kennecott's Copperton concentrator. Sand and gravel pit mining areas are also minerals extraction proposals that are contemplated and will be occurring in phases in the four canyon areas.

- b. Tree Farming/Timber Harvest

In addition to tree cutting for uses pertaining to mining and mineral

extraction generally, tree harvesting and onsite milling will be done using gas-powered generators that will support the operation of portable large diameter saws. Roads serving the Great Western Mining Company properties, the Tolton Alta property and the Tolton/Anderson Easement properties will be used for mining and timber harvest and milling.

Note: Fire Suppression: Fire is the greatest danger that exists to the property including NFS lands. Every possible facilitation to fire suppression needs to be freely available to landowners and fire fighters alike. Roads need to be in serviceable condition and we all need to be able to rapidly access our property for inspection, prevention, protection, evacuation and salvage in case of fire. Utilization, maintenance, and repair of these access roads will be critical to fire fighter access and will preserve an essential natural firebreak.

c. Recreation: Commercial and Private

- Snow cat Skiing-All properties winter season Oct 1-July 1
- Commercial and Private Snowmobiling-All properties winter season Oct 1-July 1
- Hunting/trapping-year round
- 4 Wheel drive recreation with ATV's/OHV's-May 1-Nov 30
- Trailer, yurt and teepee camping-summer and winter year round. This also includes the need to haul materials to construct campsites.
- Motorized sightseeing and educational historic mining tours.
- Family reunion sites encompass all of the properties herein mentioned as picnic/camping areas which will require motorized access for multiple disabled, diseased, handicapped and otherwise elderly people, infants, toddlers, pregnant women, along with other family members. The elevation of most of these properties ranges in the 8,000 to 11,000 foot level with elevation gains of 2,000 to 5,000 feet in a distance of one to four miles depending on the specific road and canyon visited.

Note: Improved Sanitation: As you mentioned in your written correspondence, the forest service, in conjunction with Salt Lake City, has vowed to protect the watershed areas in the canyons. The Forest Service has constructed many septic tank and privy type toilets to meet the demands of the millions of cars and people that visit the canyon watersheds already. Motorized access to our properties will reduce the overall substantial human waste being deposited in the watershed by other backcountry bikers and skiers and campers, who are seldom near restroom facilities while recreating. Coliform bacterial counts will be reduced by motorized access allowing for shorter time on ingress, loiter and egress from and to our property. It also enables re-transportation of porta-potties and the pumping of private sewage tanks. Clearly, properties with contained restroom facilities protects the watershed from coliform contaminations and conforms to the forest service's commitment to watershed protection values. Road access is an integral

component necessary to be able to pump septic tanks serving canyon campsites.

d. Trespass Patrols : Trespass has been a significant problem for these properties including resource damage, vandalism and destruction of property. Even Greg Knox, a former Wasatch-Cache Forest Service law enforcement agent, has himself admitted to me personally that he has engaged in the unlawful destruction of NO TRESPASSING signs that post private properties in Big Cottonwood Canyon areas.

In addition, back country skiers, summer hikers, campers, vandals and gang members have all routinely trespassed on and damaged private property including damaging historic mine sites and buildings, damaging fauna and flora on private property, littering, starting fires, defecating and so on. These trespassers have evaded non-motorized trespass enforcement, even stealing surveillance cameras. Motorized access and utilization are required and essential for effective enforcement. Even the forest service back country patrols are done on motorized conveyance. If it is reasonable for the forest service, it is clearly reasonable for landowners. Year round unfettered access for this purpose is required for proper protection of these properties and will help to ensure the health, safety and welfare of the public.

e. Avalanche control/Working Dog training: Further to the desire of protecting the public is the need to minimize personal liability by posting private property with signs, enforcing No Trespass laws, establishing, maintaining, and protecting electronic surveillance equipment, and transporting in and maintaining avalanche control equipment and machinery. Both landowners and the trespassing public are at risk in these steep slope backcountry areas. Motorized access is essential for this purpose.

Avalanche Working Dog training is part of a landowner strategy to keep safe from avalanches and to protect life and property. Motorized access is required for both dog and equipment transportation.

e. Underground Storage: With the exception of the Tolton Albion Basin Secret Lake property, most of these properties have some form of underground tunnels and storage facilities. These underground sties will be used year round for the storage and retrieval of personal property as well as mining supplies and equipment. Motorized year round access will be needed for this purpose.

2. On Which Properties will the previously mentioned activities occur?

All of the activities above described will occur on all of the properties listed herein.

3. The Location and Ownership of the Properties requiring motorized access over Federal Land.

Salt Lake County- Please see Forest Service and BLM (Exhibit 3) land status and encumbrance maps along with the enclosed Collier map for the locations of each individual parcel to be accessed and by which canyon.

- Little Cottonwood

In addition to the deeds provided in exhibit 4, please also see and incorporate by reference all materials contained in exhibit #10, File Code 5510-2 including " Index to Ray Quinney and Nebeker Quiet Title Request" and all supporting documents herein contained as exhibit I0.

- Big Cottonwood

Note: Exhibit 5 contains a chain of title to properties owned in fee by Great Western Mining Company, which will be accessed in Big Cottonwood Canyon from the Brighton Loop to Clayton Peak (most useable roads) to the Agathos Numbers 15,16,18 and 21

Wasatch County

- Snakecreek Canyon

Utah County

- American Fork Canyon

John Anderson Easement Properties

Salt Lake County-(See enclosed Anderson Easement and deeds as Exhibit 6)

1- Little Cottonwood Canyon

2- Big Cottonwood Canyon

- Mineral Fork
- Cardiff Fork
- Days Fork
- Silver Fork
- Honeycomb Canyon (Please see Anderson properties on Exhibit 6)

Tolton Cecret Lake Subdivision Lot

(Salt Lake County Town of Alta-see enclosed as Exhibit 7)

Salt Lake County Right of Way Deeds

See Exhibit 8-recorded Right-of-Way Deed No. 1433407, recorded June 24, 1955 Grantor- Great Western Mines Company Grantee-Salt Lake County.

Not only does this deed provide public access to the Lafayette 4597, Knox 4216, Scott 4597, Ellen 4612, Putnam 4597, Idamay 5595, Magnet 5787, Radium 5943, Finance 5943 and Molybdenite 5943, but Great Western is the

successor to reservations in the deed, namely, "in further reserving to grantor the perpetual right to establish access roads across the within granted land, located as grantor may choose, said access roads to tie in and be connected with the said public highway."

The significance of this deed language cannot be overstated.

4. Routes/Roads for which motorized access is required/requested:

a. Little Cottonwood Canyon

1. State Highway SR 210 North of Alta Town offices to Cardiff Pass (Pole Line Pass) and to John Anderson properties (see attached Frances L. Collier map Exhibit)(See enclosed exhibits 10 and 11 incorporated herein by reference) to the following claims: Toledo no.2 6334, Lucky Swede 5628, Kism 5628, Lois 6117, Gerold mine 5427, White Captain 5449, Zacatecas Lot 136, Skylark 5829, Rexall Fraction 5628, Rex Fraction 5628, Hillside 6171, Hillside Fraction 6171, Rexall no. 1.
2. SR 210 to Days Fork (same as above)
3. SR 210 via Summer Road to Albion Campground loop to Cecret Lake Subdivision (Tolton property includes easement to Cecret and Cole Lode mining claims) aka Cecret Lake mining and Timber Road (see exhibit 10)
4. SR 210 to Catherine's Pass Highway starting in Albion Basin Road past Alta Helena Mine to Catherine's Pass Highway along Lake Catherine and Lake Mary to Dog Lake and on to the Brighton Loop.
5. SR 210 to all spur roads in Albion Basin that serve Great Western Mining Company mineral properties. (i.e. Snowdrift 3784, Angler 5807, Jennie K 5607, Wedge no. 1, Standard no.1 5804, Standard no.2 6804, Standard no.4 5804, Standard no.5 5804, Good Hope #1 5804, Standard no.3 5804, White Squaw 5804, Standard no.8 5804, Good Hope #2 5804.

b. Big Cottonwood

1. State Highway 190 (SR190) up Mineral Fork Road to John Anderson properties, Wandering Boy Lot 45, Baker Lot 60 and Carbonate Lot 81(T25R2E Sections 23,25,26,36).
2. SR 190 along Cardiff Road (Forest designated as #019) to Carbonate Lot 81, Wandering Boy Lot 45 and Baker Lot 60 claims; Cardiff Road to Cardiff East Bowl (Toledo area), over Pole Line Pass into Little Cottonwood Canyon to Alta, (going to properties Zacatecas Lot 136, White Captain 5449, etc.), Cardiff Road up spur road to the Rexall no. 1 5628, Rexall Fraction, Rex Fraction, including another spur road to the Hypacia 6424, and Victory claims 6424, then to the Lucky Swede 5628, Kism, Lois, and Gerold claims. (T25R3E Sections 18,19,30,31)
3. SR 190 along Days Fork Road (#023) to John Anderson parcels Geneva 6424, Geneva No. 1, Hypacia 6424, McCrea 6417, Victory 6424 and Deming 6417, Hillside 6171, then on to the Hillside Fraction 6171, Rexall

No. 1 5628, Rexall Fraction 5628, Oxford 5627 (T25R3E Section 17,20,29,33)

4. SR 190 along Silver Fork Road up Silver Fork Canyon and Honeycomb Canyon to John Anderson properties Hanson 4683, Monitor Ext. and Monitor Mine No. 2 4683, Sella 55, Congress No. 41, Thunderer 115 and Walker 129. Honeycomb Road would access the Nellie 114 and the Walker 129. (T25R3E Section 21,22,27,28,33,34)
5. Brighton Loop to Dog Lake area. Big Cottonwood Mine and Great Western Mining Company properties: Magnet 3787, Jackmine 3788, the Leggett 116 and the Relief 123 including all of the remaining Catherine's Pass mineral estate properties aka Great Western Trail/Road, Dog Lake Road and connecting roads.
6. Brighton Loop to Ida May then along Catherine's Pass to Sunset Peak and into American Fork Canyon (Dry Fork) accessing the Mayflower 3786, Brighton 147, Catherin 148, Xmas 4746, Glaser 3785, Wedge 3607, Gitsch 3714, Alpine 3780, Sunbeam 3769, 995595, Joe 5895 then down into American Fork to access the Gitsch 3714, Leviathan 3715, Wedge No. 1 5607, Ellen 5745, Big Dan 5745, Illium 5782, June Bug 5745, Rocco 5748, Mountain Pin 5909, Hard Coin 5909, Standard No. 6 5804, Standard No. 9 5804, Standard no. 10 5804, Bernald 5804, Good Hope #1 5804 and Good Hope #2 5804.
7. Brighton Loop up to the road to Clayton Peak to access Great Westerns Agathos No. 18, Agathos No. 21, Agathos 15 and Agathos 16 aka Clayton Peak Road and unclassified road from Dog Lake connecting to Clayton Peak Road.
8. Brighton Loop to Great Western Mineral Properties Hale 4625, Clark 4715, Scott 4597, Putnam 4597, Climax 4597, Allen 4612, Lafayette 4597, Knox 4216, St. Claire 4597, Decatur 4612, Paul Jones 4612, Moultrue 4597, Alta 4597, Inez 6022, Inez No. 1 6022, Inez No. 2 6022, Inez No. 3 6022, Inez No. 4 6022, Majestic 4597, Thors 1-8 6195, Edward 6195, June 6195

c. Snakecreek Canyon

1. Snakecreek Road to Southeastern Kimball Claims of Great Western Mining Company (Kimballs No. 1-6 5744); Forest Roads 197,085,420,032,157
2. Snakecreek Road to Forest Roads 085 and 421 to Kimball Claims on lower road to Valparaiso Claim, on middle section Yellow Jacket and to Relief and Leggett claims on the upper road to Great Western properties.
3. Snakecreek Road to Big Flat and then along the pass into American Fork Canyon, then up to the Great Western Mineral estate properties in American Fork namely: Iona, Iona 1-3 5744, Hardcoin 5909, Kimball No. 7 5744, Mountain Pine 5909, Rocco 5745, PRK 5745, June Bug 5745, Illium 5782, Big Dan 5745, Ellen 5745, Wedgerod 5607, Riley 3713, Berry 3716, Leviathan 3715, Gitsch 3714, Wedge 3607, Alpine 3780,

Standard No. 4 5804, Standard No. 6 5804, Standard No. 9 5804, Standard No. 10 5804, Bernald 5804, Good Hope #1 5804, Good Hope #2 5804, Standard No. 5 5804; Forest Roads 197,186,191,421.

(Please see exhibit 9 herein enclosed showing various roads and satellite photographs of the relevant areas. Detailed aerial photographs of the Snakecreek/Brighton area have already been provided.)

5. The Level of Traffic; Frequency of Use and the Seasons of Road Use for Motorized Travel:

All of the properties in question will be used year-round in all seasons for all of the activities and uses previously described (i.e. Great Western Properties, John Anderson Properties, and the Tolton Cecret Lake property. No property is to be excluded from the compendium list of private property uses. All winter uses (i.e. cat skiing, snowmobiling) will be supplanted with summertime uses like 4-wheel drive recreation, all-terrain vehicle use and so on.

The level of traffic will be 5-10 vehicles once or twice a day all year long. This would also be true for mining vehicles and ore/timber transportation as well as summer and winter recreation. Avalanche clinics would be a few times per month in the winter only. Trespass patrols will typically occur on interconnecting roads between all of the parcels approximately one or twice a day all year-round.

6. The Types of Vehicles to be Used on Private Land/Mode of Access Proposed for Each Route:

The types of motorized vehicles are the following:

- 1) Snowcats: Piston bully type, 6-10 passenger cabs with grooming tools and other attachments
- 2) Snowmobiles: long track 152-165 inch, 600-1000 cc gas powered engines
- 3) Motorcycles: 2 stroke and 4 stroke varieties
- 4) All Terrain Vehicles
- 5) 4-Wheel Drive Vehicles (trucks, jeeps)
- 6) 10-Wheel dump trucks, John Deere type backhoes, track hoes, Kubota type tractors, skid steers, front-loader bobcats and mobile cranes.

All of these types of vehicles will be used at various times on all routes and roads described herein and depicted on map enclosures on all properties listed on the "list of exhibits"

7. Specifically describe the roadwork and road maintenance required on national forest lands and the road standards required.

Routine road maintenance will be performed so that the road surfaces are kept up to their best prior standard of construction. These roads are four-wheel drive roads that were historically used for mining and timber

harvest using horse-pulled wagons and ox carts initially and later steam engine tractors prior to the advent of modern gas powered vehicle use. In addition, some areas have segments of roads that are passenger car passable now and of a very high standard.

My intent is not to upgrade or widen existing roads, but rather to maintain their course, width and nature. I proposed to do minor mechanized work on road segments where deep tire ruts and erosion have substantially degraded the road surfaces. Other areas needing mechanized remedial work with bobcats and backhoes would be where steep slopes have eroded substantial amounts of soils down the mountainsides as soil sloughs onto the roads themselves, making them too narrow for safe passage.

In other areas large rock boulders have either rolled or slid onto the roads or have been placed there deliberately to impede and disrupt motorized travel. Machinery will need to be employed on a limited basis to clear safe passage.

In general, a 14-foot wide road base width will be observed. The Salt Lake County road segments in the Alta-Brighton area, however are "60 feet wide with an additional 70 feet on each side of the 60 foot wide easement." Obviously, once the roads are made 4-wheel drive passable, then minimal work will be needed going forward with the exception of avalanche debris every year and areas of repeated soil sloughing.

The only area I foresee needing an engineer-type work would be the first segment into Catherine's Pass from Alta (Alta Helena Mine road in Albion Basin) where severe erosion has substantially degraded about one quarter mile of a section of the old Catherine's Pass Highway.

I would be happy to consult with you and visit this area that is of particular concern. The Forest Service has also used heavy construction machinery to create a rock and soil barrier blocking road access that will need to be removed in the area immediately west of the degraded road segment previously described.

8. State the Reasons Why Current Existing Forest Travel Plans Are Insufficient or Inadequate For One's Private Property Uses

(please see exhibit 11: Mark Haik letter to Loren Kroenke dated August 22, 2006 regarding Little Cottonwood road closures)

The Forest Service's authority and control is subject to what rights the Forest Service has to begin with. For example, with respect to the Brighton to Alta properties (i.e. Catherine's Pass properties) constituting approximately 1000 acres, the Forest Service received those by deed with reservations from our predecessors in interest Great Western Mines

Company. That is, the surface land is owned by the Forest Service and the mineral estate is owned by Great Western Mining Company as are the road rights, rights of ingress, egress and other reservations contained in the deeds (See Exhibit 2). Because these are re-acquired lands and are subject to Great Western's easement rights, we are not requesting a Special Use authorization, but rather simply a recordable acknowledgement of easement.

Similarly, those parcels included in the Salt Lake County deeds for a road from Alta to Brighton are lands not subject to Forest Service control and therefore those sections of the road I wish to obtain access to should be exempted from Forest authorization and the charging of a fee. (please see Exhibit 10) Some of the patented mining claims affected are the following: Lafayette 4597, Knox 4216, Scott 4597, Ellen 4612, Putnam 4597, Idamay 5595, Magnet 5787, Radium 5943, Finance 5943, and Molybdenite 5943.

The right of way deed describes a 60-foot right of way and a easement 70 feet on each side of this 60-foot right of way (see deed 1433407 recorded June 24th, 1955). Notably, we retain the right as successors in interest to the Grantor, Great Western Mines Company, to exercise our reserved rights to remove timber at all times and seasons and, as the deed explicitly allows, "to establish access roads across the within granted land located as Grantor may choose..."

The majority of the roads going to the various parcels of private property are closed either year round or most of the year to motorized traffic. For example, in the spring of 2003, the revised Forest Plan for the Wasatch Cache National Forest removed the allowance for public winter motorized use.

Given the pattern of the Forest Service to criminally charge motorized use in these aforementioned canyons, including the criminalization of roadwork and maintenance (without regard to who possesses actual ownership of the roads themselves), I am hereby requesting the various appropriate types of Forest Service authorizations to enable year-round, motorized access for all of the land use purposes herein stated.

In the area of Snakecreek Canyon and perhaps parts of American Fork Canyon where parts of roads are currently open to motorized vehicles, or where roads are open only to motorcycles, or where roads are open to all types of motorized vehicles with some seasonal closures, I wish to obtain written Forest Service authorization for year-round motorized access to all of the aforementioned private properties with road maintenance provisions that allow access without regard to a litany of current or future closures, partial closures or other types of travel restrictions.

Requirements of Reasonable Access

The following are requirements for our statutorily guaranteed “Reasonable Use and Enjoyment” of our property for the aforementioned uses:

1. The multiple uses specified require access year round, at irregular hours, and in all types of weather and road conditions. There is no significant or reasonable justification for access less than this.
2. ANILCA enables the granting of a permanent and perpetual easement, which may not otherwise be available by special use permit. Any interest granted that is less than this, devalues the property, and is a governmental taking subject to due process of law. There is no significant or reasonable justification for access less than perpetual.
3. The easement granted under this request is required to be assignable and recordable against forest service lands. Any interest granted that is less than this, devalues the property and is a governmental taking subject to due process of law. There is no significant or reasonable justification for granting an easement that is less than assignable and recordable.
4. The private land is large enough and conducive to all terrain vehicles, over the snow conveyance, and conventional vehicles. There is no significant or reasonable justification for access less than these conveyances.
5. Maintenance of the road is contemplated to be a user responsibility, with the forest service held harmless for road condition and safety.

Acknowledgments

We acknowledge that the forest service is not obligated to maintain these roads subject to allowance of private maintenance within the existing easement. We further acknowledge that the forest service has the right to substitute equal but alternate routes in the future; i.e. substitute the historic road alignment for the current road.

Summary

No commercial use will occur upon the easement. Any commercial use that may occur will take place off forest service lands on private property.

The requested easement is the shortest and most direct route available, and there are no reasonable alternative access routes. There are no reasonable access routes across non-federal lands to this property.

ANILCA does not envision, contemplate, nor enable arbitrary definition of “reasonable use” in similarly situated private lands, or violation of civil rights.

Request

Due to the foregoing, we affirmatively assert that motorized access to our property that is year round, perpetual, recordable, and inclusive of off road

vehicular use is reasonable and required for the economic, personal, emergent, and cooperative enjoyment of this property; and hereby request such access subject to the protest and reservation below. Furthermore, we request acknowledgement of maintenance rights, duplicate keys to all gates necessary to access the property, 30 day notice of any proposed change to the keying, and duplicate sets of keys 30 days prior to any change.

Protest and Reservations

This request is made under protest, and all existing rights are expressly reserved, including but not limited to rights reserved at time of land patent, R.S. 2477 rights, rights acquired under the statutes of the State of Utah, and all other rights, interests, appurtenances, right of ways, easements and privileges whatsoever. We certainly want to eliminate any inference that we are subject to the administrative processes of the Forest Service or questions concerning ownership or access to the roads.

Required Information

The following is supplied per 36CFR251.54(d):

1. Proponent Identification.
 - a. Name Kevin Tolton, M.D.
 - b. Address 1454 Skyline Drive, Bountiful, Utah, 84010
2. Technical/Financial Capability.

Application for access only, on an existing road. No construction of Federal lands will commence under this special use.
3. Project Description.

Motorized travel over, and maintenance of, existing forest road 019; as described heretofore.

Should you need any additional information, please reference the authority under which you require it.

Sincerely,

Kevin D. Tolton, M.D.
cc: Brian Ferrabee, Regional Forester
Ken Paur, Esq.

LIST OF EXHIBITS

1. Tolton/Kroenke written correspondence January 15, 2008, March 12, 2008, February 20, 2008 letters
2. Warranty Deeds conveying Catherin's Pass properties to the Department of Agriculture by Great Western Mines Company together with reservations and "Conditions, Rules, and Regulations to Govern Exercise of Mineral Rights Reserved in Conveyances to the United States."
3. United States Department of the interior Geological Survey map of Big and Little Cottonwood Canyon included as part of USGS professional paper 201 plate 30 compiled by; Frances L. Collier, copyrighted 1932.
4. Quit Claim deeds conveying fee title in certain properties to the Great Western Mining Company, LLC including title to the reservations contained in Exhibit 2 recorded entries No. 2352903, No. 2309838 and No. 2322098.
5. Chain of Title to Great Western Mining Company properties located at the top of the Brighton ski area (Agathos Claims 15, 16, 18 and 21)
6. John Anderson Easement to Kevin Tolton dated June 5, 2007 along with Anderson deeds and various correspondences between Anderson and the Forest Service.
7. Quit Claim deed in favor of Kevin Tolton and Emily Tolton recorded 12/05/2002 for Cecret No. 1 bode mining claim, " subject to and together with a right of way over existing roadways, and rights of way over existing roadways, and rights of way for all future roadways..."
8. Rights-of-Way deed recorded June 24, 1955. Grantor: Great Western Mines Company, Grantee Salt Lake County. (Reservations contained in deed were conveyed to Great Western Mining Company LLC by Quit Claim deed herein as Exhibit 3).
9. Various and sundry maps from the USGS showing old mining and timber roads in the 4 Canyon area including some Google satellite photographs of the relevant areas showing existing roads in the Alta, Brighton, Snakecreek and Catherin's Pass areas.
10. Quiet Title Action against the United States of America, file code 5570-2, an index of documents supporting claims to roads A-W presented to the Forest Service on behalf of the Estate of Joanne L. Shrontz.
11. Letter dated August 22, 2006 from Mark C. Haik to Loren Kroenke, "Comments on the Preliminary Environmental Assessment Pursuant to the Salt Lake Ranger District's Winter Travel Plan Proposed Amendment File Code 1950/2350-5."